1945

Government of Madras.

Dev 1945

1944

Dev **(~~194 C~~) Department**

Confdl Memo No 20661 1945

Endorsement
D.O.
Memorandum
Lodged
No. 1C/1101/40.
Dated 18/4/1940

Memo No
61895 F2
6-11-4

FURTHER PAPERS.

Department.	Number.	Series.	Date.

Strictly confidential.

Very Urgent.
Rc.No.1066-43.E.

Office of the
Provincial Textile Commissioner,
Egmore, Madras, 29th March 1945.

From

S. Venkateswaran Esq., I.C.S.,
Provincial Textile Commissioner.

To

The Secretary to Government,
Development Department,
Fort St. George, Madras.

Sir,

Cotton Cloth and Yarn (Control) Order, 1943 - Clause 12 - Prosecution of Megharaj of Bellary - Adverse decision by the Sessions Judge, Bellary - Appeal to the High Court - Orders requested.

I submit herewith for the Government's perusal and return, copies of the judgment of the trial Court and of the Appellate Court in this case. The prosecution of this case was sanctioned in the Development Secretary's Proceedings No.3045-M/44-1 dated 27th January 1944.

2. The only grounds on which the Sessions Judge has set aside the conviction in this case are:

(i) the Textile Commissioner's notification dated 31--8--1943 notifying the ceiling prices was not given adequate publicity and no steps were taken to bring it to the notice of the dealers in Bellary.

(ii) My Proceedings Rc.No.630-43.B dated 10-11-1943 (relevant extract enclosed) were not also brought to the notice of the Bellary merchants.

The Sessions Judge has not disputed the identity of the cloth in question, viz., M.61, with item 9 of section A in the Textile Commissioner's notification as alleged by the prosecution, nor has he given any other reason besides the two mentioned above for allowing the appeal in this case.

3. There is not the slightest doubt that, as a matter of law, the Sessions Judge's arguments are wholly untenable. He has ignored the fundamental principle that ignorance of law is no excuse and that an accused before a Court cannot be let off even on the ground that the Magistrate or the Sessions Judge had not read the law in question. The Judge's sympathy for the accused in this case should have affected only the sentence and not the conviction. The Sessions Judge's judgment is illegal in the sense that the grounds relied upon by him are wholly inadmissible in law. His own views as to what is proper and adequate publication are quite irrelevant in law and should not have been allowed to affect his judicial decision as to the legality of the conviction. Clause 10 under which the Textile Commissioner's notification in question was issued, requires as stated in the clause itself, only publication in the Gazette of India. The offence in this case was committed on 2-11-1943, that is, long after the publication in the Gazette of India. As the Control Order itself specifies the mode of publication, rule 119(1) of the Defence of India Rules has no application. The Sessions Judge had no other relevant statutory provisions to consider in deciding what kind of publication was, as a matter of law, required in respect of the Textile Commissioner's notification. It seems to me surprising that such a senior judge should have committed such an elementary mistake.

P.T.O.

4. My proceedings dated 10th November 1943, referred to above, were only executive instructions issued for the guidance of my Textile Control Officers. There is no law which requires such instructions to be communicated to dealers. The case against the accused stood or fell on the basis of the Textile Commissioner's notification and no instructions of mine could affect that position, as a matter of law. It is a grievous error of law for the Judge to say that the appeal must succeed on the ground that my instructions were not communicated to the dealers also or on the ground that the offence was committed was prior to the date of my proceedings. This again is a mistake of a very elementary character.

5. There is no doubt, therefore, that, if we appeal to the High Court, we would succeed. The only reason why I do not want to press for an appeal to the High Court is that the prosecution in this case was sanctioned by the Development Secretary in exercise of the powers delegated to him by the Provincial Government. Clause 23 of the Cotton Cloth and Yarn (Control) Order, 1943, as it stood then, clearly contemplated the exercise of the power by the Provincial Government themselves and I think no delegation of the power was, as a matter of law, permissible. I believe that this view was accepted by the Government themselves later and that, for this reason, Government themselves sanctioned most of the subsequent prosecutions under the Cotton Cloth and Yarn (Control) Order, 1943. As a number of cases in this Province were sanctioned by the Development Secretary, I do not want to take the risk of a clever lawyer discovering and taking up this point in the appeal before the High Court. Thus, while we shall succeed as regards the points taken by the Sessions Judge, we might lose the case on the point relating to the legal validity of the delegation, to the Development Secretary of the power to sanction prosecutions under clause 23 of the Control Order.

6. The mistakes committed by the Sessions Judge in this case are of such an elementary character that I feel that we can afford to ignore them in spite of the publicity given by the newspapers to his remarks. The particular case in questi is of no importance now.

7. All Cloth and yarn are price marked now with a few exceptions, and the dealers have been deprived of all excuses, for not adhering to the control prices. Better publicity is als being given to all changes, both by the Textile Commissioner as well as by myself. As a matter of fact, the dealers, at any rate in the important markets, are, on the whole, quite on the alert about such changes and take fairly prompt notice of them. No further action is therefore required or practicable in regard to publicity for all notifications and executive instructions relating to Textile Control. Copies of my circulars are now being sent to all the Merchants' Associations and Chambers of Commerce, in the Province and the large increase in the number of these bodies has been welcomed by me and taken advantage of for the purpose of giving the utmost practicable publicity to Textile Control measures.

8. I request urgent orders.

29.3.43

For Provincial Textile Commissioner.

VSR.29/3.

of the Provincial Textile Commissioner, Madras,
Extract of Proceedings/No.630/43.B dated 10th November 1943.

Sub: Price control - Cloth - Instructions to Textile Control Officers - Issued.

The Textile Control Officers should note that, of the particulars furnished in the Textile Commissioner's notification dated 31st August 1943, the width, length and threads per inch both warp and weft) relate to the cloth in its finished condition, while the counts of yarn furnished in the notification relate to the cloth in its grey state. This point must be remembered when identifying bleached or coloured goods.

2. All the varieties of cloth specified in the Textile Commissioner's notification are not in wide use in this Province. The information given below is based on enquiries made by the Provincial Textile Commissioner and represents the results of his discussions with Textile Experts and merchants in Madras:

Item No.9 — Bleached Mulmul. This ~~cloth~~ corresponds to Mettur Mull M.61. In respect of retail sales, only cases in which the price charged is 0-13--0 and above per yard need be booked for the present.

IN THE COURT OF THE ADDITIONAL FIRST CLASS MAGISTRATE OF BELLARY.

PRESENT. Sri. N.Veeraswamy Naidu, B.A.,

C.C.No.175/44, dated 15th December 1944

JUDGMENT.

The Textile Control Officer, Bellary, has charged the accused proprietor of the wholesale cloth shop of Pokarchand Megharaj of Bellary for selling Mettur Mul No.61 at a price higher than the maximum retail price fixed by the Textile Commissioner, Bombay: an offence punishable under Rule 81(4) of the Defence of India Rules.

In exercise of the powers conferred on him under clause 10(c) of the Cotton Cloth and Yarn (Control) Order, 1943 issued under Rule 81(4) of the Defence of India Rules the Textile Commissioner, Bombay, has fixed the maimum whole sale or retail price of bleached mulmul which is known as Mettur Mul No.61 in Madras markets at Rs 15-12-6 per piece. Under clause 12 of the same order no merchant whether whole sale or retail can sell any cotton cloth at any higher rate than the one fixed by the Textile Commissioner, Bombay

The accused, Megharaj, is a cloth dealer in Bellary town. He holds whole sale and retail licences (Exhibits A and B) for dealing in cloth under the Cloth Dealers (Control Order,1943. On 25-11-43 the Textile Control Officer, Bellary,(P.W.1) checked the accounts of the accused on a reference from his superiors. He found from his accounts that ~~he sold~~ on 2-11-43 ~~[illegible]~~ the accused had sold to Bhadrayya (P.W.2) a cloth merchant of Anantapu five pieces of Mettur Mul No.61 at Rs.15-15-0 a piece and issued a cash receipt Ex. E-1 for the sale. Ex. F is his daily sales register and Ex. F-1 is the entry showing the transaction. The accused also gave a statement Ex. E before P.W.1 admitting the sal As the accused has thus violated clause 12 of the notification by selling the cloth at a higher rate than the maximum price fixed by the Textile Commissioner for the cloth P.W.1 charged the accused after obtaining previous sanction of Government for prosecuting the accused. Ex. G is the Order of Government sanctioning prosecution

The accused when called on to explain the circumstances appearing in the evidence against him admits that he sold five pieces of Mettur Mul No.61 to P.W.2 at Rs.15-15-0 a piece. He says that he purchased the cloth at Rs 15-4-0 at Adoni and sold it at Rs.15-15-0 as he was not aware of the notification. To a charge framed under Rule 81(4) of the Defence of India Rules he pleads not guilty. He examined one witness in his defence. T.G.Krishnamurty (D.W.1) is a cloth merchant at Adoni who sold the Mettur Mul to the accused on 2-11-43 at Rs.15-4-0 a piece. Ex.I is the cash bill issued by D.W.1 to the accused for the transactio The sale by D.W.1 is within limits and it does not help the accuse in any way. If the price quoted by D.W.1 is not favourable to the accused he should not have purchased the goods from him.

This is a simple case. The maximum price fixed for the clot is Rs.15-12-6 per piece. The accused admits having sold it at Rs 15-15-0 a piece. Thus he does not deny having committed the offence. I find the accused guilty of charging a price above the one fixed by the Textile Commissioner, Bombay, and convict him as charged. The Notification (Ex.C) fixing the ceiling prices was published in the Gazette of India dated 4-9-43 and the offence was comitted on 2-11-43. The accused pleads that no one gets a copy of the Gazette in Bellary and as the prices were not printed then on the cloth itself as is being done now he committed the offence as he was ignorant of the maximum price fixed for the cloth. Ignorance of law is no excuse. The accused is aware that the price of cloth has been controleed by Govern ent and that ceiling prices for all cloths have been fixed by the Textile Commissioner. He should not have ventured

cloth at those maximum price he was not aware of. I do not think that this is an extenuating circumstance which mitigates the offence. I, therefore, sentence the accused to pay a fine of Rs.3 0/- in default rigorous imprisonment for a month.

Pronounced in open court.

Sd. N.Veerasamy Naidu,
15-12-44
Additional First Class Magistrate.

(True copy) (Sd.)
K.P. Venkata Rao 10.2.43
FOR Head Clk.
Additional First Class Magistrate, Bellary

List of witnesses examined for

Prosecution.

1. Mr. P.Seetaramayya, TCO, Bellary.
2. Bhadraiya of Anantapur.
3. Mr. P.Sudarsana Rao.T.C.O.Bellary.

Defence.

1. Mr. Krishnamurthy.

Exhibits filed.

A. Wholesale Licence No.22/43-44
B. License No.24/43-44
C. Copy of Provincial Textile Commissioner's Notification.
D. Notification dated 10-11-43
E. Statement of Pakurchand recorded by Bellary P.C.O.
E-1. Cash receipt.
F. Daily account Book of the accused.
F-1. Concerned entry in Ex.F.
G. Order sanctioning prosecution of the accused.
I. Notification fixing the prices of Yarn and Cloth.
J. Memo to the T.C.O. Bellary from the Provincial Textile Commissioner Madras.

Ex. I. Wholesale license granted to T.G.Krishnamurthy.

Mis. 126 - 33 10) -28-7-39

In the Court of the Session of the Bellary Division.

THE 2nd DAY OF February 19xx 1945.

PRESENT: E.E.Mack Esq., I.C.S.,Bar-at-l

Sessions Judge.
Magistrate.
xxxxxxxx

Judgment in Criminal Appeal No 4 *of* 19xx 1945.

From what Court the Appeal is preferred	...	Additional First Class Magistrate, Bellar
Number of the case in that Court	..	C.C.No.175 of 1944.
Number of the Appeal	..	Meghraj xxfxRxxxxx(xxxxxxdxx C.A.No.4/19
Name and description of the Appellant	..	Meghraj of Bellary(accused).

The sentence and law under which it was imposed in the lower Court. } Sentenced to pay a fine of Rs.500/- in default to undergo rigorous imprisonment fo a month under Rule 81(4) of the Defence of India Rules.

Whether confirmed, modified, or reversed; and, if modified, the modification. } Reversed.

DATE—OF, *or* ON WHICH,						
Presentation.	Filing.	Notice issued by Court to appear.	Bail bond if appellant has been let out on bail.	Appellant ordered to appear.	Hearing.	Order.
15-1-45.	15-1-45.	16-1-45.	....	30-1-45.	30-1-45.	2-2-45.

This Appeal coming on for hearing before me, upon perusing the petition of appeal and the record of the evidence and proceedings, and upon duly considering the same after hearing the arguments of Sri K.T. Srinivasa Achar, Pleader for the appellant and th Public Prosecutor contra, do adjudge and pass the following

JUDGMENT

1. Appellant, a Marwari Jain merchant of Bellary, has been found guilty under Rule 81(4) of the Defence of India Rules of contravening clause 12 of the Cotton Cloth and Yarn(Control) Order, 1943. In pursuance of that order maximum prices were fixed by the Textile Commissioner for India by a notification, Ex.H, of the Department of

Industries and Civil Supplies from Bombay dated the 31st August 1943. It fixed the Ex-Mill price for Bleached Mulmul at Rs.13-2-6 and the retail price at any place in India at Rs.15-12-6 per piece of 20 yards. These were communicated by the Yarn Commissioner, Madras to Textile Control Officers in a letter, Ex.C, requiring enforcement of the ceiling price with effect from 19-8-1943 which was the date of a Press Note on the subject. In breach of this notification appellant is said to have sold 5 pieces of Mettur Mul - M.61, to an Anantapur cloth merchant (P.W.2) on 2-11-1943 at Rs.15-15-0 a piece, that is at 0-2-6 in excess of the maximum price. The shop of P.W.2 at Anantapur appears to have been inspected by the Textile Control Officer there who discovered this purchase in excess of the maximum price. It is said that in consequence the Textile Control Officer at Bellary inspected the appellant's accounts and this prosecution was launched.

2. Appellant admitted the sales of these five pieces of cloth at Rs.15-15-0 a piece and pleaded ignorance of the notification fixing maximum prices. Main reliance is placed on Ex.D, proceedings of the Provincial Textile Commissioner, Madras dated 10-11-1943 issuing instructions to Textile Control Officers by way of explanation of the Textile Commissioner for India's notification, Ex.H. As regards bleached mul which was item No.9 in Ex.H it was explained that this corresponded to Mettur Mul - M.61 which is the cloth sold in the present case, and a direction was given to book only cases in which more than 0-13-0 a yard was charged. Mr. Sitaramayya (P.W.1) the then Textile Control Officer deposed that according to the two notifications read together the wholesale price of this Mettur Mul - M.61 should not exceed Rs.15-12-7 including a maximum percentage of profit which was allowed on 25-11-1943. It is argued with some force that it was unreasonable to have prosecuted appellant for an offence alleged to have been committed by him when he sold this Mul on 2-11-1943, some days before the issue of Ex.D. It is conceded by the learned Public Prosecutor that no attempt was made by the local Textile Control Officers to communicate the maximum prices fixed in Ex.H or the explanatory instructions contained in Ex.D-1 to representatives of the cloth dealers in the District. It is admitted that there is in existence a Cloth

Dealers' Association in Bellary. The learned Public Prosecutor's explanation that Ex.D was intended primarily for the instruction of Textile Control Officers who were themselves not very conversant with the various qualities of cloth and that the cloth traders themselves must be deemed to have been aware of the ceiling prices fixed in Ex.H and the precise scope of that notification appears to me most unconvincing. I cannot follow his suggestion that cloth dealers were perfectly aware that all cloth was controlled and that if they were in any doubts they should have referred them to the Textile Control Officer to be resolved by him. It ~~ix~~ was in my view unreasonable to have launched this prosecution for a sale which took place prior to the issue of Ex.D which made the original notification, Ex.H, specifically applicable to Mettur Mul - M.61. I should have expected the local Textile Control Officers to have been instructed to communicate for the guidance of retail dealers such instructions issued making a particular notification creating an offence particularly applicable to kinds of cloth not specifically described therein. On this ground the appeal must succeed.

3. Mr.Srinivasachari has raised a broader issue, namely that Ex.H which contained the ceiling prices fixed for cloth by the Textile Commissioner for India was published only in the Gazette of India which is not available to the local public and that appellant had no means of ascertaining its scope. In this connection I feel bound to say that as a Judge administering the law I find myself embarrassed at my own official ignorance of the offences which are being created by notification. The Gazette of India is not officially communicated to this Court; nor has this notification, Ex.H, been even published in the Fort St.George Gazette. If a Judge administering the law is kept in ignorance of these offences, it is extrememly difficult for him to repel a plea put forward by an accused person that he too was not aware of the precise scope of the notification creating an offence whic particularly affected him as a dealer in particular commodities. I am perfectly aware of the grave difficulties which exist in the way of publication owing to scarcity of paper and other reasons, but I strongl feel that every notification creating an offence should even in these

times of emergency be given all reasonable publicity particularly to the representatives of the trade and interests affected. In this case there appears to have been no reason whatsoever why the Cloth Dealers' Association of Bellary could not have been sent a copy of the ceiling prices through the local Textile Control Officer for publication to its members. This would not have entailed any extravagant consumption of paper and such action in addition would be complying with fundamental legal requirements that a citizen should have an opportunity of knowing that an action previously lawful has suddenly been made unlawful. In this case had such a communication been issued through the local Textile Control Officer to the Cloth Dealers' Association I should have not under any circumstances upheld any plea of ignorance by any member of the cloth trade in Bellary Town. I consider it to be essential that in addition to publication in the Gazette of India the creation of offences such as this should be given reasonable publicity in this manner throughout districts before any prosecutions are launched. Such a course will also help to improve relations between the Controlling Officers and trades and interests affected and remove from the latter any impression that they are being kept in the dark about the creation of offences which affect them very intimately. No citizen likes suddenly to find that quite unwittingly he has violated a notification issued by a Controlling Officerseveral hundred miles away of which he has no opportunity of obtaining any knowledge and to be treated like a criminal.

4. The appeal is with these observations allowed and the fine paid will be forthwith refunded.

(True copy)

(Sd.)E.E.Mack,
Sessions Judge.

Copy to the Addl.I Class Magistrate,Bellary, through the Dt.Magistrate,Bellary.

Sheristadar.

R.S./2/8/45.

Copy to the Provincial Textile Commissioner, Santhome, Madras for information.

Dis 608/42

Memo No. 20661-M/45-2 Dt. 17.4.45

Sub Textiles - C.C. 4(c) ord 1943 -
Contravention by Sri Meghraj of
Bellary - Adverse decision in L
Court Bellary - Appeal to the High
Court Considered not necessary

Ref from the P.T.C. Re No. 1066-43 E dt 29

The Govt. agree with the P.T.C
that this is not a fit case for ~~appeal~~ preferring
an appeal to the High Court

Sd/- 12.4.45

for Secretary to Government
16/4/45

Sub: Textiles - Cotton Cloth and Yarn (Control) Orn 1943 - Contravention by Sri Magistrate of Bellary - Adverse decision by the Dist. Sessions Judge - appeal to the High Court.
From the P.T.C No 1066-43 E1 dt. 29.3.44

The cf + pp 1-10 may be perused.
In Secretary's Proceedings No 3045 M/ dt. 27.7.44 ~~Sanction~~ Sanction was accorded to the prosecution of Sri Pokarchand Meghraj Cloth dealer, Bellary for selling Mettur Mull H.61 at a price higher than the maximum price fixed under Cotton Cloth and Yarn (Control) Order 1943. The Addl. 1st Cl Magt. Bellary, who tried the case, found the dealer guilty of the offence and sentenced him to pay a fine of Rs 300 or in default to undergo rigorous imprisonment for one month. The dealer preferred an appeal against the Conviction before the Sessions Judge Bellary. The Sessions Judge [allowed the appeal & set aside the Conviction on the grounds set forth in paragraphs 2 to 5 on pp 8-10 below. The P.T.C is of the opinion that the grounds on which the Conviction was set aside by the Sessions Judge are not sound and that if an appeal is preferred in the High Court against this order the Govt. are sure to succeed. But for the reasons stated in paragraph 5 of his letter on p 2 cf he does not press for the filing of an appeal in the High Court.

With reference to A at p 2 cf it is submitted that on the advice of the Legal Dept. the power of Govt. under cl. 23 of the Cotton Cloth and Yarn (Control) Order 1943 as in force at the

Telegrams to the Secretary to Govt

Dev Depr. Kindly please see G.O. Ms No 3901
Dev Dt. 2.12.43. Subsequently however Legal
Dept held that the delegation was not valid
& that their previous ruling was incorrect.
Consequently all cases were sanctioned by
H.E. himself. It was however ordered that
no action for revision of orders issued already
issued by the Secry in virtue of the
delegation need be made and that the orders
may be left as they were leaving it to the
parties to contest the validity of the Sanction
Order. In the circumstances it is for
orders whether the P.T.C. view will be
accepted and no appeal

Legal Dept may be requested
to advise whether it is desirable
to prefer an appeal to the High Court.

I do not think this is a case
for preferring an appeal. It may
be left with the P.T.

Legal

Legal Dept

To Secretariat Dev.

Dev

Dev

Legal dept agree that there is not a fit
case for appeal. The P.T.C may be
informed accordingly. A draft on is submitted

Issued as Ord. 2066-M/45

To the Collector
& Agent (Court
Order 1943

Dev No. MC 20661 M
9.4.45

23075 2137

ASSISTANT SECRETARY I
10 APR 1945
LEGAL DEPARTMENT.

THIRD ASST. SECRETARY TO GOVT.
11 APR 1945
DEVELOPMENT DEPARTMENT

Legal No. 0213